

**MINUTES  
REPRESENTATIVE TOWN MEETING  
MARCH 15, 2010**

**RECEIVED**  
**MAR 22 2010**  
TOWN CLERK'S OFFICE  
DARIEN CT.

**CALL TO ORDER**

A Regular meeting of the Representative Town Meeting was called to order by Donna Rajczewski, Town Clerk, at 8:10 p.m.

Upon Roll Call, the following members were present:

From District I, there were 7 members present, 10 absent.  
From District II, there were 14 members present, 3 absent.  
From District III, there were 11 members present, 7 absent.  
From District IV, there were 10 members present, 6 absent.  
From District V, there were 12 members present, 4 absent.  
From District VI, there were 13 members present, 2 absent.

The absentees from District I were: Bishko, Harrington, Melz, Ness, Piccardo, Price, Puzyk, Schwarz, Smith, Tierney.

The absentees from District II were: Carder, Cummings, Noe.

The absentees from District III were: Brode, D'Urso, Maroney, Martens, Pullen, Smith, Young.

The absentees from District IV were: Cleary, Eng, Millar, Pratt, C. Schoonmaker  
S. Schoonmaker

The absentees from District V were: George, Nizolek, Ritchie, Wolcott.

The absentees from District VI were: McDermott, McNamara.

The Moderator, Karen A. Armour, assumed the Chair.

**ACCEPTANCE OF THE AGENDA**

**\*\* THE AGENDA WAS ACCEPTED BY UNIVERSAL CONSENT.**

**ANNOUNCEMENTS**

Mrs. Armour read a statement from Lois Schneider, District I, Chairman of the Education Committee (attached) regarding the Superintendent Search.

Clara Sartori, Board of Education, Chair of the Superintendent Search Committee, added that focus groups will be conducted on March 30<sup>th</sup> and March 31<sup>st</sup>.

David Bayne, Acting First Selectman, said that this weather is a serious situation. Nothing is more important than the health and safety of the residents. As of yesterday afternoon, he assumed the role of Acting First Selectman. Neither he nor the Police Chief has seen anything like this in 20 years. There were more than 300 911 calls, all of which have been responded to. Public Works crews have been doing a yeoman's job. CL&P has a command post in the I-95 rest area, dedicated to Darien. As of late this afternoon, 15 to 20 crews have come in. While they expect most of Darien's power to be restored by Wednesday evening, it will not be all on until Friday. Hindley, Tokeneke and Holmes schools all have power, but Ox Ridge and Middlesex are problematic and the high school will be restored

tomorrow. As of 7 p.m., they opened a 24-hour shelter at Tokeneke. Phone messages have gone out through the telephones. Also on the Code Red was the issue of street conditions. There are still trees falling; drive with extreme caution. Don't assume that downed wires are dead.

Acting First Selectman Bayne said that Governor Rell had called him this afternoon and asked what she could do for Darien. She declared a State of Emergency. Roads are being cleared and overtime has been authorized for all Public Works employees. Mansfield Avenue is not expected to be cleared until Wednesday. Schools will be closed tomorrow. The town dump will be open until 6:30 all week to accept debris. He asked everyone to please exercise caution. Contact the First Selectman's Office or him at 203-984-9679 (personal cell phone). In an emergency, call the Police Department at 911, or call 662-5300 for non-emergency situations. There was significant damage at the Senior Center and they hope it will be open by Wednesday.

### **APPROVAL OF THE MINUTES OF THE JANUARY 25, 2010 MEETING**

**\*\* THE MINUTES WERE ACCEPTED BY UNIVERSAL CONSENT.**

### **10-6**

### **CONSIDERATION AND ACTION ON \$410,000 APPROPRIATION FOR HOLMES SCHOOL BOILER REPLACEMENT PROJECT**

**\*\* LOIS SCHNEIDER, DISTRICT I, CHAIRMAN OF THE EDUCATION COMMITTEE, MOVED:**

**WHEREAS**, the existing boilers and related equipment at Holmes School is in need of replacement; and

**WHEREAS**, if the normal funding approval schedule were to be followed, it is questionable as to whether or not the new boilers could be installed and operational in time for the next heating season; and

**WHEREAS**, the Board of Finance at its meeting of February 23, 2010, reviewed this proposal and has approved an appropriation of Four Hundred Ten Thousand and 00/100 Dollars (\$410,000.00) to replace the boilers at Holmes School.

**BE AND IT IS HEREBY RESOLVED**, that the Representative Town Meeting of the Town of Darien approves an appropriation of Four Hundred Ten Thousand and 00/100 Dollars (\$410,000.00) from the General Fund for the replacement of the boilers at Holmes School.

**\*\* THE MOTION WAS SECONDED FROM THE FLOOR.**

Lois Schneider, District I, Chairman of the Education Committee, read that committee's report (attached).

Bruce Orr, District V, Chairman of Finance & Budget, read that committee's report (attached).

Kim Westcott, Chair of the Board of Education, read the written report of the Board of Education (attached).

Murry Stegelmann, Chairman of the Board of Finance, said that the Board of Finance recommends approval of this appropriation.

**\*\* ITEM 10-6 CARRIED ON A RISING TALLY VOTE OF 65 IN FAVOR, 0 OPPOSED, 0 ABSTENTIONS.**

**10-7**

**CONSIDERATION AND ACTION ON AMENDMENT TO CELL TOWER LEASE WITH CROWN ATLANTIC**

**\*\* MARK ADILETTA, DISTRICT V, CHAIRMAN OF THE PUBLIC WORKS COMMITTEE, MOVED:**

**WHEREAS**, the Town of Darien and Metro Mobile CTS of Fairfield County, Inc. predecessor-in-interest to Cellco Partnership d/b/a Bell Atlantic Mobile entered into a Cellular Property Lease dated June 16, 1992 for the leasing of certain premises consisting of approximately 1,800 square feet located off of Ledge Road, Darien, Connecticut; and

**WHEREAS**, the Town of Darien and Lessee's predecessor-in-interest entered into an amendment No. #1 to Cellular Property Lease dated May 1, 1997, providing for the right to sublease and otherwise amending the Lease as provided therein; and

**WHEREAS**, the Town of Darien and Lessee's predecessor-in-interest entered into a Second Amendment to Cellular Property Lease dated May 18, 1998, providing for the revision of the permitted use for the Premises and otherwise amending the Lease as provided therein; and

**WHEREAS**, the Town of Darien and Lessee's predecessor-in-interest entered into a Third Amendment to Cellular Property Lease dated March 3, 1999, providing for the revision of the permitted use for the Premises and otherwise amending the Lease as provided therein; and

**WHEREAS**, the Town of Darien and Lessee's predecessor-in-interest entered into a Fourth Amendment to Cellular Property Lease dated July 21, 2006, providing for the revision of the permitted use for the Premises and otherwise amending the Lease as provided therein; and

**WHEREAS**, the Town of Darien and Lessee's predecessor-in-interest entered into a Fifth Amendment to Cellular Property Lease dated September 22, 2008, providing for the revision of the permitted use for the Premises and otherwise amending the Lease as provided therein; and

**WHEREAS**, the Lessee desires to amend the Lease to provide for further subleasing of the Premises and the expansion of the premises and otherwise amending the Lease as provided therein; and

**WHEREAS**, any such lease requires the approval of the Board of Selectmen and the Representative Town Meeting; and

**WHEREAS**, the Board of Selectmen has approved this lease at its regularly scheduled meeting of January 25, 2010.

**NOW THEREFORE, BE IT RESOLVED THAT** the Representative Town Meeting of the Town of Darien hereby approves a Sixth Amendment of said lease by and between the Town of Darien and Crown Atlantic Company. A copy of the Sixth Amendment is attached hereto and made part hereof.

#### SIXTH AMENDMENT TO CELLULAR PROPERTY LEASE

THIS SIXTH AMENDMENT TO CELLULAR PROPERTY LEASE made as of this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between **Town of Darien, Connecticut** a municipal corporation with a mailing address of 2 Renshaw Drive, Darien, Connecticut 06820 (hereinafter referred to as "**Lessor**") which term shall include its successors and assigns where the context so admits) and **Crown Atlantic Company LLC**, a Delaware limited liability company as successor by assignment to Cellco Partnership d/b/a Bell Atlantic Mobile with a mailing address of 2000 Corporate Drive, Canonsburg, Pennsylvania 15317 (hereinafter referred to as "**Lessee**") which term shall include its successors and assigns where the context so admits).

#### WITNESSETH:

WHEREAS, the Lessor and Metro Mobile CTS of Fairfield County, Inc. predecessor-in-interest to Cellco Partnership d/b/a Bell Atlantic Mobile entered into a Cellular Property Lease dated June 16, 1992 as amended by an Amendment No. #1 to Cellular Property Lease dated May 1, 1997, a Second Amendment to Cellular Property Lease dated May 18, 1998, a Third Amendment to Cellular Property Lease dated March 3, 1999, a Fourth Amendment to Cellular Property Lease dated July 21, 2006 and a Fifth Amendment to Cellular Property Lease dated November 7, 2008 (herein referred to as "**Lease**") for the leasing of certain premises consisting of approximately 2,130 Sq. Ft. ("**Premises**") located off of Ledge Road, Darien, Connecticut ("**Property**");

WHEREAS, by a certain Assignment and Assumption Agreement dated March 31, 1999, as described in a certain Memorandum of Assignment recorded at Volume 906, Page 178, Cellco Partnership d/b/a Bell Atlantic Mobile transferred, assigned and conveyed its interest in the Lease to the Lessee and the Lessee succeeded to all rights and obligations of the Lessee under the Lease;

WHEREAS, the Lessee desires to amend the Lease to provide for further subleasing of the Premises;

WHEREAS, the Lessor is willing to grant the right to further sublease on the terms and conditions hereinafter set forth;

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged the Lessor and Lessee execute this Sixth Amendment to Cellular Property Lease, which amends the Lease as follows:

1. Paragraph 3 of the Lease, entitled "Use of Premises" is hereby further amended by adding subparagraph (h) as follows:

(h) During the term of this Lease, Lessee, its permitted sublessees, licensees, successors and assigns shall also have the further right to do any and all acts necessary or desirable in order to conduct the following activities on the Premises:

- (i) to construct an additional concrete pad and place and install equipment cabinets on the Premises as set forth in Attachment D-5 attached to this Sixth Amendment.
  - (ii) to install from time to time radio antennas on the Tower located on the Premises as set forth in Attachment D-5 attached to this Sixth Amendment.
  - (iv) to install transmitting and receiving equipment and/or any related equipment in the equipment cabinets set forth in Attachment D-5 attached to this Sixth Amendment.
- 2. The equipment, buildings, cabinets and other facilities listed in Attachment D-5 shall be in addition to the equipment, buildings and other facilities listed in the Lease and Attachments D-1, D-2, D-3 and D-4 to the previous amendments. All references to in the Lease, as amended, to Attachment D-1, D-2, D-3 and D-4 shall also refer to Attachment D-5 of this Sixth Amendment.
- 3. Lessor hereby grants permission to Lessee to enter into a sublease and/or license with Clear Wireless LLC, its affiliates, successors and assigns (collectively, "Clearwire") and all modifications, extensions and renewals thereof in connection with the sublease or license of the Premises, the Tower, the Facilities, or any portion thereof on such terms and conditions as Lessee shall determine in the sole discretion of the Lessee. In connection with the foregoing and in addition to the monthly rental already payable by Lessee under the lease by virtue of the execution of the First Amendment, Second Amendment, Third Amendment, Fourth Amendment and Fifth Amendment, Lessee will upon the commencement of rental payments to Lessee remit the amount of \$350.00 per month (collectively, "Clearwire Collected Rentals") to Lessor as a reasonable increase in rent in connection with the utilization of the Premises by Clearwire. The amount of the Clearwire Collected Rentals shall increase by the same percentage amount and on the same date as calculated in the agreement between Lessee and Clearwire. Clearwire Collected Rentals that are actually received and collected by Lessee from Clearwire shall specifically exclude sums and/or payments received by Lessee under an existing Sublease Agreement by and between Lessee and Springwiche Cellular Partnership ("Springwiche Sublease"), a license agreement executed by and between Nextel of New York, Inc., the Lessee (the "Nextel License"), a license agreement executed by and between Sprint Spectrum L.P. ("Sprint License") and a license agreement executed by and between Omnipoint Communications, Inc. d/b/a T-Mobile ("T-Mobile License"), a license agreement executed by and between MetroPCS New York LLC ("MetroPCS License") and all renewals and extensions of the foregoing, Springwiche Sublease, Nextel License, Sprint License, T-Mobile License and/or MetroPCS License as the case may be. Lessee reserves the right to require payment of sublease rental and/or license fees on any annual, quarterly or monthly basis. The Lessor acknowledges and agrees that a portion of the annual rental already payable by Lessee under the Lease by virtue of the execution of the First Amendment, Second Amendment, Third Amendment, Fourth Amendment and Fifth Amendment is in recognition of and reflects the payments, rental and other consideration payable to Lessee under the Springwiche

Sublease, Nextel License, Sprint License, T-Mobile License and the MetroPCS License. The Lessee shall provide the Lessor a copy of the sublease or license with Clearwire and any amendments thereto that relate to any rental paid thereunder and the method of payment. The Lessee shall not be responsible to the Lessor for the collection or payment of fees and rents by Clearwire to the Lessor and the Lessee shall have no liability to the Lessor in the event of failure of payment by Clearwire. In addition, any non-payment by Clearwire to Lessee shall not affect or negate in any way the Lease or Lessee's rights to the Premises. The obligation for payment to Lessor shall continue only for such period that Lessee is entitled to receive payment under its agreement with Clearwire for the use of the Premises.

4. Lessor and Lessee ratify, confirm and adopt the Lease as of the date hereof (as amended) and acknowledge that there are no defaults under the Lease or events or circumstances which, with the giving of notice or passage of time or both, would ripen into events of default.

All Capitalized terms used herein, unless otherwise defined herein, shall be defined in conformity with the terms and conditions of the Lease.

All other terms and conditions of the Lease except as amended by this Sixth Amendment to Cellular Property Lease remain unchanged and the parties confirm and ratify the conditions of the Lease.

This Sixth Amendment to Cellular Property Lease is executed in any number of counterparts, each copy of which shall be deemed an original document.

***SIGNATURES ON FOLLOWING PAGE***

IN WITNESS WHEREOF, the parties have executed this instrument as a sealed instrument as of the day and year first written above.

WITNESSES:

LESSOR:

**Town of Darien, Connecticut,  
a municipal corporation**

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

Name: David M. Campbell

Title: First Selectman

Hereunto Duly Authorized

**STATE OF CONNECTICUT**

\_\_\_\_\_, ss

On this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me, the undersigned notary public, personally appeared David M. Campbell, First Selectman and proved to me to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose on behalf of the Town of Darien, Connecticut.

\_\_\_\_\_  
Notary Public

My Commission Expires:

IN WITNESS WHEREOF, the parties have executed this instrument as a sealed instrument as of the day and year first written above.

WITNESSES:

LESSEE:

**Crown Atlantic Company LLC,  
a Delaware limited liability company**

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

Name: Robert Ackerman

Title: Area President – East Area

Hereunto Duly Authorized

**STATE OF NORTH CAROLINA**

*Mecklenburg, ss*

On this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me, the undersigned notary public, personally appeared the above-named Robert Ackerman, Area President – East Area and proved to me to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose on behalf of Crown Atlantic Company LLC.

\_\_\_\_\_  
Notary Public  
My Commission Expires:



## ATTACHMENT D-5

List and Description of additional equipment, buildings and other facilities that may be constructed, installed, operated and maintained by Lessee, its permitted sublessees, licensees, successors and assigns on or at the Premises.

1. Equipment Cabinet(s)
2. Mounting hardware, transmission lines
3. Any and all additional equipment, facilities, structures, improvements, apparatus, generators, machinery, wires, cables, conduits, pipes, etc. as Lessee shall deem necessary or appropriate from time to time in the conduct of business operations or in providing communication services to the public.
4. Three (3) panel antennas and Three (3) microwave dish antennas

**\*\* THE MOTION WAS SECONDED FROM THE FLOOR.**

Mark Adiletta, District V, Chairman of the Public Works Committee, read the report of the Public Works Committee (attached).

Bruce Orr, District V, Chairman of the Finance & Budget Committee, read the committee's report (attached).

Acting First Selectman Bayne said that the Selectmen had unanimously approved this amendment and recommended that the RTM do so as well.

James Cameron, District IV, said that Ymax is an existing technology and this week proves how important it is for us to have alternative technology.

Martin Magida, District II, said that he agreed with Mr. Cameron. He asked about the rate, saying it felt a bit low. He said he wondered if that was because it was Ymax and asked how it compared to the other rents.

Bruce Orr, District V, Chairman of Finance & Budget, said that the 2008 amendment was \$500 per month. This is a bit low but the 2008 lease had more cabinetry.

Acting First Selectman Bayne said that the Town Administrator had said that this is Yfi and it is start-up technology.

Elisabeth Bacon, District II, said there is room on the tower for additional emergency equipment. She asked if the tower is maxed out for the commercial use.

Mark Adiletta, District V, Chairman of the Public Works Committee, said that the siting council was presented this information; it did not address other equipment that could potentially be put on the tower.

Susan Lehan, District III, asked about the safety of adding additional equipment to cell towers, and she asked if that was part of any of the discussions. Mr. Adiletta said it was not.

**\*\* ITEM 10-7 CARRIED ON A RISING TALLY VOTE OF 64 IN FAVOR, 0 OPPOSED, 1 ABSTENTION.**

**10-8**

**CONSIDERATION AND ACTION ON CODE OF ORDINANCE AMENDMENTS RELATING TO THE HEALTH DEPARTMENT**

**\*\* JAMES PATRICK, DISTRICT V, VICE CHAIRMAN OF PUBLIC HEALTH & SAFETY, MOVED:**

**WHEREAS**, discussions have been held regarding the need to update that section of the Darien Code dealing with Health and Human services; and

**WHEREAS**, numerous meetings have been held with the Director of Health in consultation with members of the RTM.

**BE AND IT IS HEREBY RESOLVED** that the Representative Town Meeting of the Town of Darien hereby amends Chapter 30 of the Darien Code as more specifically set out in the document attached hereto and made a part hereof.

**SECTION 1**

Chapter 30, Article II, FOOD ESTABLISHMENTS, Sections 30-21 through 30-25 of the Darien Code of Ordinances are hereby repealed and a new Section 30-21 of the Code of Ordinances, Town of Darien, Connecticut, is hereby created to read as follows:

Sec. 30-21. The Director of Health shall adopt regulations, pursuant to Section 30-1 of the Darien Code of Ordinances and the General Statutes, pertaining to the sanitation and permitting of food service establishments and setting license, inspection, and plan review requirements, propose fees for same, and penalties for violations.

**SECTION 2**

Chapter 30, Article IV, PRIVATE SEWAGE SYSTEMS, Sections 30-101 through 30-105 of the Darien Code of Ordinances are hereby repealed and a new Section 30-101 concerning subsurface sewage disposal systems is hereby created to read as follows:

Sec. 30-101. The Director of Health shall adopt regulations, pursuant to Section 30-1 of the Darien Code of Ordinances and the General Statutes, pertaining to subsurface sewage disposal systems.

### SECTION 3

Chapter 30, Article V, PRIVATE WATER WELLS, Sections 30-121 and 30-122 of the Darien Code of Ordinances are hereby repealed and a new Section 30-121 concerning Private Well Water is hereby created to read as follows:

Sec. 30-121. The Director of Health shall adopt regulations, pursuant to Section 30-1 of the Darien Code of Ordinances and the General Statutes, pertaining to private well water standards and the construction and testing of private water wells in Darien.

### SECTION 4

Chapter 30, Article VI, BARBERSHOPS, HAIRDRESSING AND COSMETOLOGY SHOPS, Division 1, Sections 30-151 through 30-155; Division 2, Sections 30-180 through 30-190; and Division 3, Sections 30-216 through 30-222 of the Darien Code of Ordinances are hereby repealed and a new Section 30-151 is hereby created to read as follows:

Sec. 30-151. The Director of Health shall adopt regulations, pursuant to Section 30-1 of the Darien Code of Ordinances and the General Statutes, pertaining to barbershops, hairdressing, cosmetology and related services.

### SECTION 5

Chapter 30, Article VII, PUBLIC POOL CODE, Division 1, Sections 30-251 through 30-261; and Division 2, Sections 30-285 through 30-293 of the Darien Code of Ordinances are hereby repealed and a new Section 30-251 is hereby created to read as follows:

Sec. 30-251. The Director of Health shall adopt regulations, pursuant to Section 30-1 of the Darien Code of Ordinances and the General Statutes, pertaining to public pools.

### SECTION 6

Chapter 30, Article VIII, Lead Poisoning Prevention, of the Code of Ordinances is hereby created to read as follows:

The Director of Health shall adopt regulations, pursuant to Section 30-1 of the Darien Code of Ordinances and the General Statutes, pertaining to lead poisoning prevention.

### SECTION 7

The repeal and adoption of new ordinances was approved by the Darien Representative Town Meeting on March 15, 2010 and shall be effective in accordance with §57 of the Darien Charter.

**\*\* THE MOTION WAS SECONDED FROM THE FLOOR.**

James Patrick, District V, Chairman of Public Health & Safety, read the committee's report (attached).

Sarah Seelye, District II, Chairman of TGS&A, read that committee's report (attached).

David Knauf, Health Director, highlighted portions of his "Health Department Ordinances & Regulations Summary of Proposed Changes" included in the RTM packet.

Peter Kelly, District I, re Sec. 30-1, asked for a summary of what this represents. Town Counsel Fox said 30-1 refers to the general statutes. The Moderator said it confers on the Director of Health the authority to make regulations.

Stephen Olvany, District III, asked how many public pools are in town. Mr. Knauf said there are 15. The definition includes condo, club pools, etc., anything other than those in a single family home. There will be no changes operationally; it is a housekeeping issue.

Holly Kelly, District VI, asked how these regulations get approved. The Moderator said they are consistent with the state changes. Mr. Knauf said that, as proposed, the regulations have gone through the Advisory Board of Health and the Board of Selectmen. They have also been reviewed by Town Counsel.

**\*\* ITEM 10-8 CARRIED ON A RISING TALLY VOTE OF 65 IN FAVOR, 0 OPPOSED, 0 ABSTENTIONS.**

**10-5**

**CONSIDERATION AND ACTION ON TAX ABATEMENT ORDINANCE FOR AFFORDABLE HOUSING (POSTPONED FROM JANUARY 25, 2010 RTM MEETING)**

**\*\* MARC THORNE, DISTRICT II, WITHDREW HIS AMENDMENT FROM THE MEETING OF JANUARY 25, 2010.**

**\*\* JOHN VAN DER KIEFT, DISTRICT V, CHAIRMAN OF PZ&H COMMITTEE, MOVED:**

**WHEREAS**, Connecticut General Statutes § 8-215 allows tax abatement for housing for low and moderate income persons; and

**WHEREAS**, Connecticut General Statutes § 8-215 allows any municipality by ordinance to provide for the abatement in part or in whole of real property taxes on housing solely for low and moderate income persons or families; and

**WHEREAS**, the Board of Selectmen reviewed and approved a proposed ordinance and forwarded it to the RTM for its consideration.

**BE AND IT IS HEREBY RESOLVED** that the Representative Town Meeting of the Town of Darien adopts the enabling legislation allowing tax abatement or low and moderate income housing as more specifically set out in the ordinance attached hereto and made part hereof.

**PROPOSED DARIEN TAX ABATEMENT ORDINANCE FOR LOW AND MODERATE INCOME HOUSING**

Sec. 1. Tax abatement ordinance for low and moderate income housing.

(a) *Definitions.* For the purposes of this section:

(1) *Low and moderate income housing* means affordable housing as defined by G.S. 8-39a, the construction or rehabilitation of which is aided or assisted in any way by any federal or state statute, which housing is subject to regulation or supervision of rents, charges or sale prices and methods of operation by a governmental agency under a regulatory agreement or other instrument which restricts occupancy of such housing solely to persons or families whose incomes do not exceed prescribed limits.

(2) *Owner* means a person or persons, partnership, joint venture, or corporation who or which has executed, or will execute, a regulatory agreement or other instrument with a governmental agency, either federal, state or local, which limits occupancy of the low and moderate income housing owned or to be owned by such person or persons, partnership, joint venture or corporation to persons or families whose income do not exceed prescribed limits.

(b) *Contracts for abatement.* The First Selectman may, in accordance with G.S.8-215, and with the approval of the representative town meeting, enter into contracts for the Town with owners of low and moderate income housing, granting abatement, in whole or in part, of the taxes on the real estate used for such low and moderate income housing. The amount of such abatement shall be established in each such contract, giving due consideration to the purpose or purposes to which the money equivalent of the taxes so abated is to be applied. Each such contract shall require that the owner apply the money equivalent of the taxes so abated to one or more of the following specified purposes: (1) to reduce rents below the levels which would be achieved in the absence of abatement; (2) to improve housing quality and design; (3) to effect occupancy by persons and families of varying low and moderate income levels, within limits determined by the Commissioner of Economic and Community Development by regulation; or (4) to provide necessary related facilities or services in such housing.

(c) *Term.* The abatement shall become effective on the date specified in the contract between the town and an owner of low and moderate income housing. The term of abatement shall extend for the remainder of the fiscal year in which abatement becomes effective and may continue for a period not to exceed thirty-nine (39) consecutive fiscal years thereafter; provided, that such abatement shall terminate at any time when the property for which tax abatement has been granted is not used solely for low and moderate income housing; and provided, further, that the continuation of such abatement may be conditioned upon the continuation of state reimbursement to the town for such abatement. The abatement authorized herein shall be granted only for affordable housing developments wherein at least fifty percent of the dwelling units qualify as low and moderate income housing and have received a Special Permit for the affordable housing development from the Darien Planning and Zoning Commission and upon which construction or rehabilitation commenced after March 1, 2010. Only the low and moderate income housing units are eligible for a tax abatement. Any contract heretofore or hereafter entered into between the town and an owner of low and moderate income housing may be amended by the parties to extend the period of abatement up to thirty-nine (39) years in accordance with this section.

(d) *State assistance.* The First Selectman may, with the approval of the representative town meeting, execute a contract on behalf of the town with the state for financial assistance by the state in the form of reimbursement for the tax abatement granted to an owner of low and moderate income housing in accordance with this section.

Sec. 2. Effective date March 1, 2010.

**\*\* THE MOTION WAS SECONDED FROM THE FLOOR.**

**\*\* John Van Der Kieft, District V, Chairman of the PZ&H Committee, read his written report (attached).**

Bruce Orr, District V, Chairman of the Finance & Budget Committee, read that committee's report (attached).

Holly Kelly, District VI, a member of the TGS&A subcommittee, said they met in the last two weeks with a quorum and found no conflicts with the Charter in this amendment. They unanimously voted that there was no conflict with the Charter.

Acting First Selectman David Bayne said that the First Selectman expressed his personal support for this ordinance at the January 25<sup>th</sup> RTM meeting. Since that time, the Board of Selectmen has voted unanimously to approve this ordinance.

Murry Stegelmann, Chairman of the Board of Finance, said that the Board of Finance supports this ordinance. It will encourage affordable housing. They think it is appropriate that the Board of Finance has a role. They support the ordinance as it is currently drafted.

James Cameron, District IV, raised a Point of Information. He said that they had received a very extensive memo in their packet from Spencer McIlmurray and a Q&A, and he asked who wrote this Q&A. The Moderator said that it came from the Rules Committee. The questions were collected following the joint meeting with various subcommittees. The Rules Committee voted to include this; the questions were derived from those asked at the joint meeting. Some answers were drafted by the Rules Committee; some came from Mr. Kilduff.

Spencer McIlmurray, District II, said by giving the Board of Finance approval, the RTM would not necessarily be included in all of these discussions.

**\*\* ITEM 10-5 CARRIED ON A RISING TALLY VOTE OF 61 IN FAVOR, 2 OPPOSED, 1 ABSTENTION.**

**\*\* UPON MOTION MADE AND SECONDED FROM THE FLOOR, IT WAS UNANIMOUSLY VOTED TO ADJOURN AT 9:30 P.M.**

Respectfully submitted,

Cheryl Telesco  
Telesco Secretarial Services

## APPENDIX

<u>DISTRICT I</u>	<u>(10-6)</u>	<u>(10-7)</u>	<u>(10-8)</u>	<u>(10-5)</u>
Bishko	absent	absent	absent	absent
Harrington	absent	absent	absent	absent
Imbimbo	yes	yes	yes	yes
Kahn	yes	yes	yes	no
Kelly, P.	yes	yes	yes	yes
Melz	absent	absent	absent	absent
Nelson	yes	yes	yes	yes
Ness	absent	absent	absent	absent
Piccaro	absent	absent	absent	absent
Price	absent	absent	absent	absent
Puzyk	absent	absent	absent	absent
Schneider	yes	yes	yes	yes
Schwarz	absent	absent	absent	absent
Sini	yes	yes	yes	yes
Smith	absent	absent	absent	absent
Sommer	yes	yes	yes	no
Tierney	absent	absent	absent	absent

### DISTRICT II

Bacon	yes	abstain	yes	yes
Carder	absent	absent	absent	absent
Cummings	absent	absent	absent	absent
Gallo	yes	yes	yes	yes
Harman	yes	yes	yes	yes
Hoffman	yes	yes	yes	yes
Howe	yes	yes	yes	yes
Magida	yes	yes	yes	yes
Maguire	yes	yes	yes	yes
Marston	yes	yes	yes	yes
McIlmurray	yes	yes	yes	yes
Mundt	yes	yes	yes	yes
Noe	absent	absent	absent	absent
Ridley	yes	yes	yes	yes
Seelye	yes	yes	yes	yes
Thorne, B.	yes	yes	yes	yes
Thorne, M	yes	yes	yes	yes

### DISTRICT III

Bayne	yes	yes	yes	yes
Brode	absent	absent	absent	absent
Burke	yes	yes	yes	yes
Cardone	yes	yes	yes	yes
Coyle	yes	yes	yes	yes
Duffy	yes	yes	yes	yes
D'Urso	absent	absent	absent	absent
Fead	yes	yes	yes	yes
Ferretti	yes	yes	yes	yes
LeHan	yes	yes	yes	yes
Maroney	absent	absent	absent	absent
Martens	absent	absent	absent	absent
Moore	yes	yes	yes	yes
Morton	yes	yes	yes	yes
Olvany	yes	yes	yes	yes
Pullen	absent	absent	absent	absent
Smith	absent	absent	absent	absent
Young	absent	absent	absent	absent

<u>DISTRICT IV</u>	<u>(10-6)</u>	<u>(10-7)</u>	<u>(10-8)</u>	<u>(10-5)</u>
Cameron	yes	yes	yes	yes
Cleary	absent	absent	absent	absent
Davis	yes	yes	yes	yes
Eng	absent	absent	absent	absent
Kemp	yes	yes	yes	yes
McIlree	yes	yes	yes	yes
Millar	absent	absent	absent	absent
Miller	yes	yes	yes	yes
Morrison	yes	yes	yes	yes
Peters	yes	yes	yes	yes
Pratt	absent	absent	absent	absent
Rayhill	yes	yes	yes	yes
Rycenga	yes	yes	yes	yes
Savage	yes	yes	yes	yes
C.Schoonmaker	absent	absent	absent	absent
S.Schoonmaker	absent	absent	absent	absent

#### DISTRICT V

Adiletta	yes	yes	yes	yes
Camuti	yes	yes	yes	yes
Conniff	yes	yes	yes	yes
Dailey	yes	yes	yes	yes
Davis	yes	yes	yes	yes
George	absent	absent	absent	absent
Hennessy	yes	yes	yes	yes
Nizolek	absent	absent	absent	absent
Orr	yes	yes	yes	yes
Patrick	yes	yes	yes	yes
Ritchie	absent	absent	absent	absent
Russell	yes	yes	yes	yes
Sharp	yes	yes	yes	yes
Stolar	yes	yes	yes	abstain
vanderkieft	yes	yes	yes	yes
Wolcott	absent	absent	absent	absent

#### DISTRICT VI

Adelman	yes	yes	yes	yes
Armour	Did not vote			
Baldwin	yes	yes	yes	yes
Bealle	yes	yes	yes	absent
Conologue	yes	yes	yes	yes
Grogan	yes	yes	yes	yes
Guimond, M.	yes	yes	yes	yes
Guimond, N.	absent	absent	absent	absent
Hawkins	yes	yes	yes	yes
Kelly, H.	yes	yes	yes	yes
McDermott	absent	absent	absent	absent
McLean	yes	yes	yes	yes
McNamara	absent	absent	absent	absent
Poli	yes	yes	yes	yes
Swenson	yes	yes	yes	yes



## Announcement from the RTM Education Committee

The Board of Education has engaged a search firm to assist in the search for a new Superintendent of Schools. A brief survey has been posted on the Public Schools web page to gain input from the community. These surveys are to be completed by March 25, 2010. If you would like your opinions to be considered in the new Superintendent search, please go online and fill in the survey. A paper survey is also available.

# **RTM Education Committee – Resolution 10-6**

## **Report and Speech to the RTM on March 15, 2010**

Good evening. My name is Lois Schneider and I am Chair of the RTM Education Committee.

Without objection, I would like to waive the reading of the text of resolution numbered 10-6 . . . I would like a motion to consider this resolution. . . a second . . .

At the Regular meeting of the RTM Education Committee on March 8, 2010 with 13 of 14 members present, the Education Committee met to discuss and vote on the request for \$410,000 for replacement boilers and associated equipment for Holmes School. Guests at our meeting were Board of Education members: Elizabeth Hagerty-Ross, Clara Sartori, Heather Shea and Paul Engemann from the school administration. They provided us with background on this request, updates on the installation of the Royle boilers last year and answered our questions. We voted unanimously to support this request.

This project was to be part of the 2010-2011 capital requests but was moved forward to assure that the long lead time for procuring the equipment could be supported and that the project would be functional before the next heating season. The project is necessary as:

- > The current boilers are approximately 75 and 14 years old
- > The useful life of the older boiler is past and the 2<sup>nd</sup> boiler has aged due to being the primary boiler and picking up the slack from the older boiler.
- > The burners will be replaced with dual-fuel oil and gas fired burners to take advantage of any beneficial price differential between the two energy sources. There is gas service to Holmes as pipes were laid during the 1995-96 Elementary School renovation.
- > Replacing the boilers in 2 stages would incur incremental costs, reduce the efficiency of the boiler operation and would not provide a financial benefit over the long-run.
- > Additional replacements will be made for piping, burners and make up tanks for total system replacement.
- > The new boilers and additional components will be current and energy efficient with an expectation of 15-20% more efficiency.
- > The old domestic hot water tank will be replaced by a more energy-efficient tank.

Approval by the Board of Finance was granted with the understanding that this is a top priority 2010-2011 capital project from the Board of Education.

Last year we approved the Royle boilers early. This worked out well as we could put out request for bids with the knowledge that funding had been approved; get good pricing and commitments from well-qualified contractors as the contracts could be signed. The work was completed successfully on time and within budget with the boilers being operative in September and October.

This is the last of the boiler replacement requests for the 7 schools for a while as with the completion of this request, all the schools will have new boilers from 1995/1996 and later.

The RTM Education committee supports this important project. We urge you to do the same. Thank you.

**Finance & Budget Committee  
Report to RTM, March 15, 2010**

**(10-6) RTM RESOLUTION APPROPRIATING \$410,000 FOR THE  
REPLACEMENT OF BOILERS AT HOLMES SCHOOL**

I am Bruce Orr, District 5 and Chair of Finance and Budget.

The F&B committee met on March 8, 2010, with 15 of 16 members present comprising a quorum. We were joined by several members of the BOE and Mr. Paul Engemann, Director of Facilities.

The Committee listened to a brief presentation by Mr. Engemann and engaged in an active dialogue on the needs, costs and timing of this appropriation. Many of us were on the Committee when the replacement of the Royle School boilers came forward last year and were fairly well grounded in the need to plan such a project well in advance in order to reduce overall costs and avoid potential disruptions during the school year. While this project does not have the level of urgency as the Royle project, the repairs will need to be done soon.

Several of the members of the Committee had concerns with the timing of this appropriation – given the current state of the economy and the fact that we have not yet approved the 2010/11 Town capital budget. We reviewed the BOE recommended priority capital projects with representatives from the BOE and it was determined that total recommended priority projects amount to \$875k for the year with the Holmes boiler replacement being the #1 priority.

The Committee voted 14 in favor, 1 opposed to approve this appropriation.

We recommend the RTM vote in favor of this Resolution.

Bruce G. Orr, Sr.  
Chairman  
March 15, 2010

RTM Meeting 3/15/10

I'm Kim Westcott, Chairman of the Darien Board of Education

Madame Moderator and Members of the RTM,

I would like to thank you for considering an accelerated appropriation for the Holmes School boiler replacement, the Board of Education's top priority capital project for 2010- 2011, which it approved on February 9, 2010. The Board of Finance and this body approved the early appropriation for the Royle School boiler replacement last March, 2009 and I am pleased to report that that project was completed on time and on budget prior to the onset of the heating season. We are asking to replicate this schedule with the Holmes School project.

(As you heard from Mrs. Schneider and Mr. Orr) The Holmes School steam boilers have reached the end of their useful reliable lives. There is a long lead time associated with ordering this equipment and we want to insure that replacement occurs before the cold weather sets in next fall/winter. From Mr. Engemann's memo, you know that this is a \$410,000 project which includes asbestos abatement, demolition and removal of the old boilers, installation of the new boilers and an energy efficient hot water heater. The boilers will have dual fuel burners which will allow them to run on either #2 heating oil or natural gas, giving the district flexibility to choose the less expensive fuel.

If this project is approved tonight, the replacement schedule will commence almost immediately with the equipment being ordered in April. The demolition will begin once school ends in June, and installation would occur throughout the summer and early fall. It is a tight schedule but given last year's experience we are confident the project would be complete in time for the heating season.

We would be happy to respond to any questions.

Thank you and I ask that you support funding for this project at this time.

Good evening Town officials, RTM Members, Darien Residents and Guests.

My name is Mark Adiletta and I am Chairman of the Public Works Committee.

At this time I would like to move Item 10-7 Amending the Lease between the Town of Darien and Crown Atlantic Company and ask for a second.

Without objection I move to waive the reading of the Resolution.

On behalf of the PWC I present to the RTM for their consideration and ratification Item 10-7.

*(Constituting a quorum)*

At our meeting March 8<sup>th</sup>, with 9 of 14 members present, PWC voted: 9-Yea, 0-Nay, 0-Abstain to recommend this item to the RTM.

Based on the presentation to the BOS by Town Administrator Kilduff on January 25<sup>th</sup>, a review of the 6<sup>th</sup> Amendment to the Lease, a set of elevation Drawings showing the changes to the tower and pad and a Q&A with Mr. Kilduff, the PWC discussed this amendment.

#### Committee Comments:

- A new Internet provider will make a new wide area network available within a 3-5 mile radius of the tower. Wi-Max
- Vertical antenna and dish antenna would be added to the existing tower at an existing space on the tower.
- Siting Council looked at the structural strength of the tower and has signed off on the addition of the equipment.
- The additional cabinets are within the existing footprint for the cement pad.

*(Big Port  
(Not wired)  
moderate  
cost)*

- *No incremental cost to town.*
- *Amendment allows for replacement of equipment from time-to-time to accommodate upgrades.*
- *Not additional equipment.*

- The additional Revenue was noted as a positive. *Note understood to be MHT.*
- The Town is not giving up any need space on the tower or capacity. That allocation remains.

• *Offers and addition choice of broadband provider to residents of Darien*  
 The Public Works Committee asks that you vote "Yes" and ratify Item 10-7 authorizing the amendment to this Lease.

Thank you.

**Finance & Budget Committee  
Report to RTM, March 15, 2010**

**(10-7) RTM RESOLUTION AMENDING THE LEASE BETWEEN THE TOWN  
AND CROWN ATLANTIC COMPANY**

I am Bruce Orr, District 5 and Chair of Finance and Budget.

The F&B committee met on March 8, 2010, with 15 of 16 members present comprising a quorum.

Due to a timing and minor clerical error, the Committee did not discuss and take action on this Resolution. — *at this meeting.*

However the Chair puts forth the following observations on the Resolution for RTM consideration:

- The Committee did active due diligence on the <sup>2006 4<sup>th</sup></sup> 2008 5<sup>th</sup> Amendment to the lease allowing for subleasing and other provisions such as the Town's provision to have the ability to audit Lessee.
- This amendment contains no other changes to the lease other than additional subleasing provisions
- The \$350 per month, while lower than the 5<sup>th</sup> amendment, appears reasonable given the scope of the anticipated sublease.

Bruce G. Orr, Sr.  
Chairman  
March 15, 2010

## Public Health & Safety Committee Reports March 8 and March 15, 2010

A special meeting of PH&S was held on Monday, March 8, with 9 of 12 members present.

David Knauf, Director, Darien Health Department graciously attended to review changes to the Health Department ordinances. He noted that these changes were approved unanimously by the Board of Selectmen on January 25, 2010. A portion of the changes involve amending and/or repealing ordinances for wells, septic systems, food service, public pools and salons which will then be adopted as regulations without substantive change. New regulations for septic and wells are proposed that reflect current CT health code requirements and do not represent any policy changes or costs. Director Knauf noted that new lead regulations adopted last year are included.

In addition, some existing regulations unrelated to the Health Department are being eliminated. The Clam Harvesting ordinance has been left intact for now and will be addressed later this year. Mr. Knauf answered many questions related to the ordinances specifically and also answered questions regarding water quality, restaurant inspections and the new rating system. The committee thanked the Director for attending our meeting and his desire to attend the RTM meeting on the 15<sup>th</sup> to answer any questions.

A few members expressed their desire to have access to all the Health Department ordinances, not just the amendments reflected in item 10-8 upon which the RTM will be voting. Mary Guimond, our ever cheerful clerk, agreed to email each member the 53 pages of text. Our Committee voted unanimously to delay the PH & S vote on item 10-8 until the regularly scheduled meeting on March 15, tonight, prior to the RTM meeting.

Tonight's meeting was held at 7:15 with 6 of 12 members present.  
More discussion took place. PH & S voted in favor of item 10-8 6-0 in favor  
Source of the meeting.



## Representative Town Meeting

March 15, 2010

TGS&A Secondary Committee to the Consideration and Action on Code of Ordinance amendments relating to the Health Department

Good Evening. I am Sarah Seelye, Chair of TGS&A

Our committee met on February 8 and March 1, 2010 to discuss the much needed Health Code Review. Many regulations had not been addressed since the 1970's. A subcommittee chaired by Bodhana Puzyk met previously with Wayne Fox, Town Counsel and David Knauf for discussions for proposed changes to the ordinances. It was decided that this was a housekeeping issue with no substantive changes. TGS&A determined there were no conflicts with the Code of Ordinances or the Town Charter. Following discussion, a vote was taken with 12 of 13 members present. It was unanimous to approve and present the changes to the RTM this evening.

Thank you.

The proposed Tax Abatement Ordinance for Low and Moderate Income Housing serves a dual purpose in that it provides the town with a means to help manage the development of affordable housing in Darien and it provides an incentive for developers to construct multi-unit, mixed income housing. By stipulating that a project must be in receipt of a “special permit” from the Planning & Zoning Commission and that a minimum of 50% of units be designated for affordable housing, the town will be able to assure itself the project will be both desirable for the town and will make a meaningful contribution to the town’s affordable housing goals. The developer then qualifies for consideration of a tax abatement from the town – which renders the project more financially viable, and could assist the developer in gaining financing.

Each tax abatement application will be separate and distinct in consideration of purpose, duration and amount.

As Fred Conze, Chairman of the Planning and Zoning Commission, has portrayed the ordinance, it provides for a mutually cooperative effort – where, by working together the town will be able to assure itself of an appealing and desirable project and the developer will benefit from financial assistance.

In addition, adoption of the ordinance will demonstrate to state agencies and special courts – such as the 8-30g court -- that Darien not only supports affordable housing but encourages it through the tax abatement incentive

In the packet you received for tonight’s meeting there are two inserts to help explain and provide perspective to this ordinance

- TGS&A Report – which provides very clear explanations of “key considerations”, as well as pros and cons
- Questions and Answers – provided by the Rules Committee – which defines what a tax abatement is and answers many questions pertinent to our consideration

Assuming we have all read these, it would be redundant for me to rehash them.

On Wednesday, March 3<sup>rd</sup> PZ&H met to review the present version which has added approval by the Board of Finance to that of the Board of Selectmen and the RTM.

There has been considerable discussion within our Committee. Issues discussed were:

- Is there a need for tax abatements since, to date, affordable housing projects in Darien have not been dependant on tax abatements
- As some of our peer towns do not offer tax abatements, do we need to
- Can the town afford to offer tax abatements in view of the present level of taxes, the likelihood of increasing taxes and capital projects on hold such as the Police Department and Weed Beach renovations
- Will passage invite a rush of applications
- Could denial of an application result in litigation

Participation by the Board of Finance produced long and considered debate –clearly it was the principal consideration behind the Committee’s vote. Those who felt the Board’s role should be advisory – eventually the minority -- felt the Board

would conduct the same analysis, weigh the same factors and employ the same logic whether their role would be advisory or approval by vote. Consequently they do not believe there is a need to vote.

Those who prefer the Board have a vote – the majority -- concurred the same due diligence would be applied. However, they felt with the intricacies of financing, an ability to foresee financial implications long term and in possessing particular perspective on the town's budgetary considerations they should be accorded a vote on tax abatement applications under this Ordinance. Those in favor believe the Board's vote to be an important extra measure for safeguarding the town's finances.

On a motion to vote approval of the Ordinance "as written", with 12 members of 17 present, the vote was 8 in favor, 4 not in favor, there were no abstentions.

In addition, the Committee feels very strongly there is a need to guarantee that developers, and owners, adhere to the terms of the abatement contract. The Committee did not pursue this concern as a possible amendment to the Ordinance as it was decided this is an issue of process rather than policy.

Consequently it is recommended that a system be established that requires the developer, or owner, to annually file a Report of Compliance with a designated town office or body (possibly the Tax Assessor or The Board of Finance) in order to insure that the developer or owner be in compliance with the contract.

*John van der Kieft*  
Chairman - PZ+H

**Finance & Budget Committee  
Report to RTM, March 15, 2010**

**(10-5) RTM RESOLUTION ADOPTING ENABLING LEGISLATION IN THE  
FORM OF A TAX ABATEMENT ORDINANCE FOR LOW AND MODERATE  
INCOME HOUSING**

I am Bruce Orr, District 5 and Chair of Finance and Budget.

The F&B committee met on March 8, 2010, with 15 of 16 members present comprising a quorum.

As this body will recall, when this legislation was put forth at our Jan. 21<sup>st</sup> RTM meeting, the Finance & Budget Committee had conducted its due diligence on this resolution and reported back to you that the Committee had voted to approve with conditions – the conditions being that we recommended that the BOF have an advisory role in any affordable tax abatement contract that was put forth by the Selectman's office. The conditions were drafted to an Amendment to the legislation that was not put forward that evening. For reference, please refer to the F&B report to the RTM for Jan. 21, 2010, which is attached to the RTM minutes in your package. (LAST PAGE)

At our recent regular meeting, we reviewed and discussed the current version of the tax abatement ordinance and the consensus was that while the Committee still felt that the BOF advisory role was a preferred option, having BOF in the approval process is acceptable. On the whole, no other substantive changes to the ordinance were noted and the Committee's position is unchanged and voted unanimously to approve.

We recommend the RTM vote in favor of this ordinance.

Bruce G. Orr, Sr.  
Chairman  
March 15, 2010